No. 94-1175

In The

Supreme Court of the United States

October Term, 1994

BANK ONE, CHICAGO, N.A.,

Petitioner,

v.

MIDWEST BANK & TRUST COMPANY,
an Illinois Banking Corporation,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

PETITIONER'S REPLY BRIEF

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Petitioner, Bank One, Chicago, N.A., states the following in reply to Respondent's Brief in Opposition, and respectfully requests that a Writ of Certiorari issue to review the judgment of the United States Court of Appeals for the Seventh Circuit entered on July 11, 1994.

ARGUMENT

I.

THE SEVENTH CIRCUIT COURT OF APPEALS' DECISION DEPRIVES PETITIONER AND ALL MEMBER INSTITUTIONS OF THE CONGRESSIONALLY MANDATED JUDICIAL FORUM ESTABLISHED IN 12 U.S.C. 4010.

In its argument, Respondent ignores the only issue presented in the Petition for a Writ of Certiorari—whether the Seventh Circuit erred by holding that the Expedited Funds Availability Act does not support federal jurisdiction for inter-bank disputes arising under Federal Reserve Board Regulation CC—instead choosing to focus on the fact that in the order amending its original decision, the Seventh Circuit added a few words chastising the Federal Reserve Board while at the same time it clarified that it was not precluding the possibility that a bank could, perhaps, file an action arising under Regulation CC in state court.[1] However, the Seventh Circuit's order amending its original erroneous decision does not alter its fundamental impact: Petitioner and all member institutions of the Federal Reserve System have been deprived of the essential federal judicial remedy established by Congress in the Expedited Funds Availability Act.

Ignoring the issue presented, Respondent, instead, chooses to raise a red herring, claiming that since federal regulations are incorporated into the Uniform Commercial Code and have the effect of agreements, Petitioner's claim can readily be adjudicated in state court as are other U.C.C. controversies. Respondent misses the point: all banks will

[1] In its brief, Respondent charges that Petitioner failed to include the order amending the original decision in the Appendix to its Petition for Certiorari. This is false. In accordance with Supreme Court Rule 14.1(k)(iii), the order is printed in the Appendix at pages 24-25.

still be deprived of the federal remedy provided by Congress.

Even if a bank can bring its action in state court, there is good reason Congress provided a federal remedy to avoid banks' being forced into state court with nowhere else to turn. In fact, the case *sub judice* represents a prime example why relying on state forums to redress inter-bank disputes arising under Regulation CC is unacceptable. Petitioner originally filed this suit in the Circuit Court of Cook County, Illinois. Despite the federal regulation, the state court granted Respondent's motion to strike almost the identical complaint which was subsequently filed in the district court, and based upon which the district court granted summary judgment to Petitioner.

It is for this reason that the Federal Reserve Board argued in its Petition for Rehearing before the Seventh Circuit that "if uncorrected, [the Seventh Circuit's decision] would disrupt the system of interbank liability crafted in response to the EFA Act and replace it with, at best, a hodge-podge of inefficient procedures . . . ." *Brief For Board of Governors of the Federal Reserve System as Amicus Curiae in support of Plaintiff-Appellee's Petition for Rehearing*, p. 3. It is to avoid the possibility that 50 states will develop 50 different bodies of case law in their interpretation of a federal regulation that Congress established federal jurisdiction for inter-bank disputes arising from violations of Regulation CC.

At the same time, it is unclear whether Petitioner here, or other similarly situated banks, will ever have a forum in which to resolve this type of dispute on the merits. Under Illinois law, it is possible that Petitioner might be precluded from filing this claim in state court since the statute of limitations expired while the matter was pending in federal court. Thus, although the district court has already ruled

Petitioner is entitled to relief on the merits, it might never obtain this relief. If the Seventh Circuit's decision is not reversed, Petitioner will never obtain a binding adjudication on the merits of its claim.

It is imperative that this Court resolve this dispute to prevent other banks from being placed in the same quandary. Until the Court does so, other banks will be forced to choose whether to file their suits in the district courts, running the risk that their suits will be dismissed for want of jurisdiction while the state court statute of limitations expires, or voluntarily file in state court, despite Congress' and the Federal Reserve Board's intention that the matters be heard in federal court.

II.

THE SEVENTH CIRCUIT ERRED BY HOLDING NO FEDERAL JURISDICTION EXISTS.

In its Petition, Petitioner focused on the importance of the issue presented rather than the substance of its claim. Although the latter will be addressed in its brief on the merits, Petitioner must reply to one (1) argument raised by Respondent in its brief.

At page 8 of its brief, Respondent states: "Regulation CC is promulgated under the authority of section 611(f) [12 U.S.C. 4010(f)] and those regulations are therefore included in the cause of action in 611(a) [12 U.S.C. 4010(a)]." This is a non-sequitor. There is nothing in the statute to suggest that 611(f) (4010(f)) is included in section 611(a) (4010(a)). Both are parts of Section 611, 12 U.S.C. 4010, the Section entitled "Civil liability." As argued in the Petition, since both 611(f) and 611(a) are part of 611, the Congressional grant of jurisdiction in 611(d)—that "any action under this **section** [12 U.S.C. 4010] . . ." (emphasis added) can be brought in federal court—applies to those causes of action arising under both 611(a) and 611(f).

Had Congress intended the jurisdictional reach of Section 611(d) to extend only to Section 611(a), Congress could easily have provided in Section 611(d) that there is federal jurisdiction for "any action arising under **subsection 611(a)** . . ." thereby making it clear that no jurisdiction was intended for those actions under other subsections of section 611, including subsection 611(f). Congress did not do so. Subsection 611(a) governs only those actions between consumers and banks. It does not purport to affect actions, such as this one, between two (2) banks, brought under the regulations promulgated by the Federal Reserve Board in accordance with the Congressional mandate contained in Section 611(f).

CONCLUSION

For each of the foregoing reasons, Petitioner, Bank One, Chicago, N.A. respectfully requests that this Court grant this Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit.

Respectfully submitted,

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